

§ 679.20(b)(1)(ii)(C) and (D), with the exception of the trawl gear sablefish CDQ reserves, shall be allocated among the CDQ groups by the panel established in section 305(i)(1)(G) of the Magnuson-Stevens Act.

(3) *Annual allocations of PSQ reserves among the CDQ groups.* The annual PSQ reserves shall be allocated among the CDQ groups based on the percentage allocations approved by NMFS on August 8, 2005. These percentage allocations are described and listed in a notice published in the FEDERAL REGISTER on August 31, 2006 (71 FR 51804).

(c) *Transfers.* CDQ groups may request that NMFS transfer CDQ or PSQ from one group to another group by each group submitting a completed transfer request as described in § 679.5(n)(1). NMFS will approve the transfer request if the CDQ group transferring quota to another CDQ group has sufficient quota available for transfer. If NMFS approves the request, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species. The PSQ will be transferred as of the date NMFS approves the transfer request and is effective only for the remainder of the calendar year in which the transfer occurs.

[77 FR 6498, Feb. 8, 2012]

§ 679.32 CDQ fisheries monitoring and catch accounting.

(a) *Applicability.* This section contains requirements for CDQ groups, vessel operators, and managers of processors that harvest or process fixed gear sablefish CDQ, pollock CDQ, or groundfish CDQ. Regulations governing the catch accounting of halibut CDQ are at § 679.40(h).

(b) *PSQ catch.* Time and area closures required once a CDQ group has reached its salmon PSQ or crab PSQ are listed in § 679.7(d)(5). The catch of salmon or crab by vessels using other than trawl gear does not accrue to the PSQ for these species. The discard of halibut by vessels using pot gear, jig gear, or hook-and-line gear to harvest sablefish CDQ will not accrue to the halibut PSQ

if this bycatch has been exempted from the halibut PSC limit in the annual BSAI specifications published in the FEDERAL REGISTER.

(c) *Fisheries monitoring requirements and catch accounting sources for vessels sablefish, pollock, or groundfish CDQ fishing—*(1) *Sablefish CDQ fishing with fixed gear.* NMFS will use the following data sources to account for catch made by vessels sablefish CDQ fishing with fixed gear:

(i) *Sablefish CDQ.* NMFS will use the same information sources that are used to debit sablefish IFQ accounts (see § 679.40(h)) to debit fixed gear sablefish CDQ accounts. This information must be reported through standard reporting requirements in § 679.5.

(ii) *Groundfish CDQ.* NMFS will use the catch information submitted under standard reporting requirements in § 679.5 to debit any other groundfish CDQ species caught while sablefish CDQ fishing from applicable groundfish CDQ accounts.

(2) *Pollock CDQ fishing.—*(i) *Operational requirements for catcher/processors and motherships.* Operators of catcher/processors directed fishing for pollock CDQ and motherships taking deliveries of codends from catcher vessels directed fishing for pollock must comply with the following:

(A) Comply with the observer coverage requirements at § 679.50(c)(5)(i)(A).

(B) Notify the observers of CDQ catch before CDQ catch is brought onboard the vessel and notify the observers of the CDQ group and CDQ number associated with the CDQ catch.

(C) Comply with the catch weighing and observer sampling station requirements at § 679.63(a).

(ii) *Data sources used for CDQ catch accounting—*(A) *Catcher/processors and motherships.* NMFS will use observer data as the basis to debit pollock CDQ, groundfish CDQ, and PSQ account balances.

(B) *Catcher vessels delivering to shore-side processors.* NMFS will use the catch information submitted under standard reporting requirements in § 679.5 to debit pollock CDQ, other groundfish CDQ species, and PSQ caught while pollock CDQ fishing from applicable CDQ account balances.

(3) *Groundfish CDQ fishing—(i) Operational requirements—(A) Catcher vessels without an observer.* Operators of catcher vessels in this category must comply with one of the following requirements:

(1) Catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish CDQ species, halibut CDQ, and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (d) of this section, unless retention of groundfish CDQ species is not authorized under § 679.4; discard of the groundfish CDQ species is required under subpart B of this part; or, in waters within the State of Alaska, discard is required by the State of Alaska.

(2) Catcher vessels delivering unsorted codends to motherships must retain all CDQ and PSQ species and deliver them to a mothership that meets the requirements of paragraph (c)(3)(i)(D) of this section.

(B) *Catcher vessels with an observer using trawl gear and delivering to shore-side processors.* Operators of vessels in this category must comply with all of the following requirements:

(1) Comply with the observer coverage requirements at § 679.50(c)(4)(iii)(E).

(2) Retain all CDQ species and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (d) of this section unless retention of groundfish CDQ species is not authorized under § 679.4 of this part; discard of the groundfish CDQ species is required under subpart B of this part; or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

(3) Retain all halibut and crab PSQ in a bin or other location until it is counted and sampled by the observer.

(4) Provide space on the deck of the vessel for the observer to sort and store catch samples and a place from which to hang the observer sampling scale.

(C) *Catcher/processors using trawl gear.* Operators of vessels in this category must comply with the following requirements:

(1) Comply with the observer coverage requirements at § 679.50(c)(4)(iii)(A).

(2) Notify the observers of CDQ catch before CDQ catch is brought onboard the vessel and notify the observers of

the CDQ group and CDQ number associated with the CDQ catch.

(3) Comply with the catch monitoring requirements at § 679.93(c).

(D) *Motherships taking deliveries of unsorted codends.* Operators of vessels in this category must comply with the following requirements:

(1) Comply with the observer coverage requirements at § 679.50(c)(4)(iii)(B).

(2) Notify the observers of CDQ catch before CDQ catch is brought onboard the vessel and notify the observers of the CDQ number associated with the CDQ catch.

(3) Provide an observer sampling station as described at § 679.28(d).

(4) The operator of a mothership taking deliveries of unsorted codends from catcher vessels must weigh all catch on a scale that complies with the requirements of § 679.28(b). Catch must not be sorted before it is weighed, unless a provision for doing so is approved by NMFS for the vessel. Each CDQ haul must be sampled by an observer for species composition and the vessel operator must allow observers to use any scale approved by NMFS to weigh partial CDQ haul samples.

(E) *Observed catcher vessels using nontrawl gear.* Operators of vessels in this category must retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (d) of this section unless retention of groundfish CDQ species is not authorized under § 679.4 of this part, discard of the groundfish CDQ or PSQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. All of the halibut PSQ must be counted and sampled for length or average weight by the observer obtained in compliance with § 679.50(c)(4)(iii)(E).

(F) *Catcher/processors using nontrawl gear.* Operators of vessels in this category must comply with the following requirements:

(1) Each CDQ set on a vessel using nontrawl gear must be sampled by an observer obtained in compliance with § 679.50(c)(4)(iii)(C) or (D) for species composition and average weight.

(2) Notify the observers of CDQ catch before CDQ catch is brought on board

the vessel and notify the observers of the CDQ number associated with the CDQ catch.

(3) Provide an observer sampling station as described at § 679.28(d).

(ii) *Data sources used for CDQ catch accounting.* NMFS will use the following sources to account for the catch of groundfish CDQ and PSQ species caught by vessels groundfish CDQ fishing.

(A) *Catcher vessels less than 60 ft (18.3 m) LOA.* The weight or numbers of all CDQ and PSQ species will be obtained from the CDQ delivery information submitted by processors to NMFS in accordance with paragraph (d) of this section.

(B) *Catcher vessels delivering unsorted codends.* The weight and numbers of groundfish CDQ (including pollock) and PSQ species will be determined by applying the species composition sampling data collected for each CDQ haul by the observer on the mothership to the total weight of each CDQ haul as determined by weighing all catch from each CDQ haul on a scale approved under § 679.28(b).

(C) *Observed catcher vessels using trawl gear.* The estimated weight of halibut and numbers of crab PSQ discarded at sea will be determined by using the observer's sample data. The weight or numbers of all landed groundfish CDQ and salmon PSQ will be derived from the delivery information submitted through the eLandings system, as required at § 679.5(e).

(D) *Catcher/processors and motherships using trawl gear.* The weight and numbers of CDQ and PSQ species will be determined by applying the observer's species composition sampling data for each CDQ haul to the total weight of the CDQ haul as determined by weighing all catch from each CDQ haul on a scale certified under § 679.28(b).

(E) *Observed catcher vessels using nontrawl gear.* The weight of halibut PSQ discarded at sea will be determined by using the observer's sample data. The weight or numbers of all landed groundfish CDQ and salmon PSQ will be derived from the delivery information submitted through the eLandings system, as required at § 679.5(e).

(F) *Catcher/processors using nontrawl gear.* The weight of halibut PSQ and all groundfish CDQ species, except sablefish, will be determined by applying the observer's species composition sampling data to the estimate of total catch weight, if any CDQ species are discarded at sea. Sablefish CDQ caught with fixed gear is accounted for as described in paragraph (c)(1) of this section.

(G) *Alternative fishing plan for catcher/processors.* A CDQ group may propose the use of an alternative method, such as using only one observer where normally two would be required, sorting and weighing of all catch by species on processor vessels, or using larger sample sizes than could be collected by one observer by submitting an alternative fishing plan to NMFS. NMFS will review the alternative fishing plan and approve it or notify the qualified applicant in writing if the proposed alternative does not meet the requirements of such a plan.

(1) *Alternative fishing plan requirements—(i)* The alternative proposed must provide equivalent or better estimates than use of the NMFS standard data source would provide and the estimates must be independently verifiable.

(ii) Each haul or set on an observed vessel must be able to be sampled by an observer for species composition.

(iii) Any proposal to sort catch before it is weighed must ensure that the sorting and weighing process will be monitored by an observer.

(iv) The time required for the level 2 observer to complete sampling, data recording, and data communication duties must not exceed 12 hours in each 24-hour period and the level 2 observer must not be required to sample more than 9 hours in each 24-hour period. NMFS will not approve an alternative fishing plan that would require the observer to divide a 12-hour shift into shifts of less than 6 hours.

(2) *Alternative fishing plan distribution and validity.* The CDQ group must provide a copy of the NMFS-approved alternative fishing plan to the operator of the approved vessel. The vessel operator must maintain the plan onboard the vessel at all times while it is operating under the alternative fishing

plan. Alternative fishing plans are valid for the remainder of the calendar year in which they are approved. Alternatives to the requirement for a certified scale or an observer sampling station will not be approved.

(d) *Monitoring requirements for shore-side processors and stationary floating processors*—(1) *Requirements for processors taking deliveries of pollock CDQ*—(i) *Catch weighing*. Managers of shore-side processors or stationary floating processors taking deliveries of pollock CDQ must comply with the requirements at § 679.63(c).

(ii) *Catch monitoring and control plan*. Managers of AFA inshore processors or stationary floating processors taking deliveries of pollock CDQ must follow an approved catch monitoring and control plan as described at § 679.28(g).

(2) *Requirements for processors taking deliveries of groundfish CDQ*. Managers of shore-side processors and stationary floating processors taking deliveries of groundfish CDQ must comply with the following requirements:

(i) Comply with observer coverage requirements at § 679.50(d)(5)(iii) of this part.

(ii) *Provide prior notice to observer of offloading schedule*. Notify the observer of the offloading schedule of each CDQ delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the sorting and weighing of the entire delivery.

(iii) *CDQ and PSQ by weight*. Sort and weigh on a scale approved by the State of Alaska under § 679.28(c) all groundfish and halibut CDQ or PSQ by species or species group.

(iv) *PSQ by number*. Sort and count all salmon and crab PSQ.

(v) *CDQ and PSQ sorting and weighing*. Sorting and weighing of CDQ and PSQ must be monitored by an observer.

(e) *Use of non-CDQ harvest regulations for vessels in voluntary fishing cooperatives*—(1) *Applicability*. If approved by NMFS under this paragraph (e), vessels participating in a voluntary fishing cooperative in a non-CDQ sector are authorized to conduct groundfish CDQ fishing under the same regulations that apply while such vessels are used to directed fish in the non-CDQ fisheries and are not required to comply

with the CDQ harvest regulations in paragraph (c)(3)(i) of this section.

(2) *Who may apply?* A CDQ group representative, a representative of an association representing CDQ groups, or the authorized representative of a voluntary fishing cooperative may submit an application to use alternative CDQ harvest regulations.

(3) *Application process*—(i) *Application documents*. A completed application is comprised of an application form and a copy of the cooperative contract or an affidavit, as described below:

(A) *Application form*. The application to use alternative CDQ harvest regulations is available on the NMFS Alaska Region Web site at www.alaskafisheries.noaa.gov. All information fields must be accurately completed, including information about the applicant, the voluntary fishing cooperative, and the vessels participating in the voluntary cooperative.

(B) *Cooperative contract or affidavit*. The application must include either a copy of the current voluntary fishing cooperative contract demonstrating participation in the cooperative by the owners of each of the vessels named on the application form or an affidavit that includes the information required in this paragraph (e)(3)(i)(B). NMFS must be able to determine the following information from the voluntary fishing cooperative contract or the affidavit: the name of the authorized representative of the cooperative; the printed names and signatures of each vessel owner that is a party to the voluntary cooperative; the vessel name, FFP number, and LLP license number for each vessel managed under the cooperative; and the target species, processing mode, gear types, and management area(s) associated with the voluntary cooperative's federal fishing operations. If an applicant submits a copy of the voluntary fishing cooperative contract but it does not contain this information, the applicant also must submit a written affidavit that provides all of the information required in this paragraph (e)(3)(i)(B) that is not included in the cooperative contract.

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(ii) *Application submission.* The application for use of non-CDQ harvest regulations must be submitted to the Regional Administrator per the instructions on the application form.

(iii) *Submittal and duration*—(A) *Submittal.* An application requesting approval for the use of non-CDQ harvest regulations may be submitted to NMFS at any time.

(B) *Duration.* Once approved, an application to use alternative CDQ harvest regulations is effective as of the date on which NMFS approves the application. The approval is effective until the requesting entity withdraws its application, or until there is a change in the membership of the voluntary cooperative, whichever occurs first.

(iv) *NMFS review.* NMFS will review an application to use non-CDQ harvest regulations to determine that all of the information submitted complies with the requirements of paragraphs (e)(2) and (3) of this section, and that the vessels listed on the application form represent a majority of the vessels participating in the applicable sector. If NMFS determines that the application is deficient, NMFS will notify the applicant in writing to identify the discrepancies and provide the applicant with an opportunity to correct them.

(v) *NMFS determinations and administrative appeal.* NMFS will approve an application to use non-CDQ harvest regulations when it determines that all of the information submitted with the application complies with the requirements of paragraphs (e)(2) and (3) of this section, the vessels listed on the application form represent a majority of vessels participating in an applicable sector, and the CDQ harvest regulations are more restrictive than the non-CDQ regulations for the applicable sector. NMFS will issue an initial administrative determination (IAD) disapproving the application and the reasons for its disapproval if the application is incomplete, the voluntary cooperative does not represent a majority of the vessels participating in the sector, or the CDQ harvest regulations are not more restrictive than the non-CDQ regulations for the applicable sector. An applicant who receives an IAD disapproving an application may appeal

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under the procedures set forth at § 679.43.

(vi) *Amendments.* The entity applied for use of non-CDQ harvest regulations must promptly notify NMFS of any changes in the voluntary fishing cooperative's membership by re-applying in accordance with this paragraph (e). Amendments to an approved application to use alternative CDQ harvest regulations may be submitted to NMFS at any time, and will be reviewed under the requirements of this paragraph (e).

[77 FR 6499, Feb. 8, 2012]

EFFECTIVE DATE NOTE: At 77 FR 59060, Sept. 26, 2012, § 679.32 was amended by revising paragraph (c)(3)(i)(F)(I), and removing paragraph (c)(3)(ii)(G), effective Oct. 26, 2012. For the convenience of the user, the added text is set forth as follows:

§ 679.32 CDQ fisheries monitoring and catch accounting.

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(c) * * *
(3) * * *
(i) * * *
(F) * * *

(I) Operators of catcher/processors using hook-and-line gear must comply with § 679.100. Operators of catcher/processors using pot gear must comply with observer coverage requirements at § 679.50(c)(4)(iii)(D); and

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Subpart D—Individual Fishing Quota Management Measures

§ 679.40 Sablefish and halibut QS.

The Regional Administrator shall annually divide the TAC of halibut and sablefish that is apportioned to the fixed gear fishery pursuant to the annual management measures published in the FEDERAL REGISTER pursuant to § 300.62 of chapter III of this title and § 679.20, minus the CDQ reserve, among qualified halibut and sablefish quota share holders, respectively.

(a) *Initial allocation of QS*—(1) *General.* The Regional Administrator shall initially assign to qualified persons, on or after October 18, 1994, halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories. QS will be assigned